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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/697,067	10/30/2003	William Anthony Harper		8135

7590 01/11/2006
William Harper
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16541 Redmond Way
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EXAMINER

GEHMAN, BRYON P

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 01/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/697,067

Applicant(s)

HARPER, WILLIAM ANTHONY

Examiner

Bryon P. Gehman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-57 is/are pending in the application.
- 4a) Of the above claim(s) 14, 22-26, 40, 48-52 and 55-57 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13, 15-21, 26-39, 41-47, 53 and 54 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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1. Applicant's election of species I, Figure 1 in the reply filed on 6 September 2005 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). The claims 14, 22-26, 40 and 48-52 that do not have their structure shown by Figure 1 have been withdrawn from consideration.

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 2-7, 9-13 and 15-18 are finally rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claims 2-6, 9-13 and 15-18, line 1 of each, it appears "The-product" is hyphenated, either intentionally or unintentionally, which is in error. In claim 7, line 2, "are-translucent" appears hyphenated in error.

In claim 5, line 2, "said fluid" is inconsistent with "fluid product", as "fluid" is an adjective, not a noun.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 4-6, 10, 13, 15, 17-21, 27-28, 31-33, 36, 39, 41, 43-47 and 53-54 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Cole (713,606) in view of one of Salfisberg (2,298,421) and Paley et al. (5,814,959). Cole discloses a transparent container (2) with a transparent sidewall, a quantity of useful transparent liquid product sealed in the container and an insert (1) bearing meaningful communication enclosed within the container, the insert in contact with the liquid product, the insert being viewable through the transparent sidewall. Salfisberg and Paley et al. each disclose locating a useful flowing product (as discussed; 84; respectively) in a polymeric packet (2; 16). To modify the basic product or packet teaching of Cole employing an alternative container such as a transparent packet as disclosed by one of Salfisberg and Paley et al. would have been obvious to one of ordinary skill in the art as a substitution of analogous container means. To employ a particular content for the product is not seen to distinguish any new and unexpected result over the basic disclosure of Cole, as the possible content variation is virtually limitless.

6. Claims 1, 4-6, 10, 13, 15, 17-21, 27-28, 31-33, 36, 39, 41, 43-47 and 53-54 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Cadwell (956,937) in view of one of Salfisberg and Paley et al. ('159). Cadwell discloses a transparent

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container (A) with a transparent sidewall, a quantity of useful transparent liquid product sealed in the container and an insert (D) bearing meaningful communication enclosed within the container, the insert in contact with the liquid product, the insert being viewable through the transparent sidewall. Salfisberg and Paley et al. each disclose locating a useful flowing product (as discussed; 84; respectively) in a polymeric packet (2; 16). To modify the basic product or packet teaching of Cadwell employing an alternative container such as a transparent packet as disclosed by one of Salfisberg and Paley et al. would have been obvious to one of ordinary skill in the art as a substitution of analogous container means. To employ a particular content for the product is not seen to distinguish any new and unexpected result over the basic disclosure of Cadwell, as the possible content variation is virtually limitless.

7. Claims 1, 4-6, 9-10, 14-16, 19-21, 27-28, 31-33, 35-36, 40-47 and 53-54 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Salfisberg (2,572,056) in view of one of Salfisberg ('421) and Paley et al. ('159). Salfisberg ('056) discloses a container with a transparent sidewall, a quantity of useful fluid product (column 2, lines 27-36) sealed in the container and an insert (6 bearing meaningful communication enclosed within the container on the sidewall of the container, the insert in contact with the liquid product, the insert being viewable through the transparent sidewall. Salfisberg and Paley et al. each disclose locating a useful flowing product (as discussed; 84; respectively) in a polymeric packet (2; 16). To modify the basic product or packet teaching of Salfisberg ('056) employing an alternative container such as a

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transparent packet as disclosed by one of Salfisberg and Paley et al. would have been obvious to one of ordinary skill in the art as a substitution of analogous container means. To employ a particular content for the product is not seen to distinguish any new and unexpected result over the basic disclosure of Salfisberg ('056), as the possible content variation is virtually limitless.

8. Claims 2-3, 11-12, 29-30 and 37-38 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claims 1 and 28 above, and further in view of Hoynack (3,598,609). Hoynack discloses a transparent packet constructed of food grade polymer film (polyethylene). To modify the previous combinations employing a particular material for the packet would fail to distinguish any new and unexpected result over the disclosure of Hoynack, as polyethylene was well known to provide a transparent packaging for fluid contents.

9. Claims 7-8 and 34-35 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claims 6 and 33 above, and further in view of Farmer (2,093,976). Farmer discloses a surface treated to be opaque. To employ an opaqueness to the packet of the combinations above would have been obvious in order to promote viewing of contents against the opaque surface.

10. Applicant's arguments filed September 6, 2005 have been fully considered but they are not persuasive. Applicant argues that Cole "teaches away" from employing a

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polymeric packet. It is not seen how an old reference that does not expressly disclose every innovation since its provision teaches away from those innovations. Accordingly, using applicant's argument, employing a plastic bottle is also "taught away" by the disclosure of Cole, as would any other slight change in bottle structure per se discovered since 1902, as they were not anticipated by Cole in his disclosure.

Contentions that the reference patents are old are not impressive absent a showing that the art tried and failed to solve the same problem notwithstanding its presumed knowledge of the references. See *In re Wright*, 569 F.2d 1124, 193 USPQ 332 (CCPA 1977). The examiner maintains that given the idea of placing a label in a liquid in a transparent container was known as taught by Cole, to employ this old idea in various transparent containers with various transparent liquid contents well known in the 21st century would have been within the level of ordinary skill in the art. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art.

See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, to provide a fluid product in a transparent polymeric packet is clearly demonstrated by the secondary references to Salfisberg and Paley et al..

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

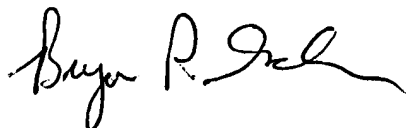
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bryon P. Gehman whose telephone number is (571) 272-4555. The examiner can normally be reached on Monday through Wednesday from 5:30am to 6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu, can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

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For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Bryon P. Gehman". The signature is fluid and cursive, with the first name "Bryon" being more prominent than the last name "Gehman".

Bryon P. Gehman
Primary Examiner
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BPG